

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

GERMAILL MCKNIGHT,

Petitioner,

-against-

9:03-CV-1195
(LEK/DRH)

GARY GREENE,

Respondent.

DECISION AND ORDER

This matter comes before the Court following a Report-Recommendation filed on May 5, 2005 by the Honorable David R. Homer, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3 of the Northern District of New York. After ten days from the service thereof, the Clerk has sent the entire file to the undersigned, including the objections by Petitioner Germaill McKnight, which were filed on May 13, 2005.

It is the duty of this Court to “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b). “A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.* This Court has considered the objections and has undertaken a de novo review of the record and has determined that the Report-Recommendation should be approved for the reasons stated therein.

Petitioner has also submitted a motion for a stay, dated October 8, 2005, seeking to stay the pending writ of habeas corpus until such time that Petitioner can exhaust unarticulated state claims

and incorporate them into his pending petition. Dkt. No. 18. The Court denies Petitioner's motion for a stay.

Accordingly, it is hereby

ORDERED, that the Report-Recommendation is **APPROVED** and **ADOPTED** in its ENTIRETY; and it is further

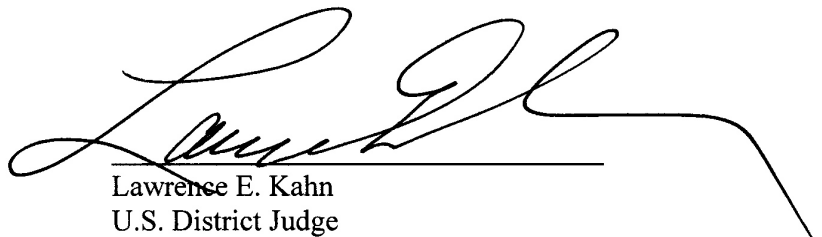
ORDERED, that the petition is **DENIED** and **DISMISSED**; and it is further

ORDERED, the Petitioner's motion for a stay (Dkt. No. 18) is **DENIED**; and it is further

ORDERED, that the Clerk serve a copy of this order on all parties.

IT IS SO ORDERED.

DATED: October 18, 2005
 Albany, New York



Lawrence E. Kahn
U.S. District Judge